



Office of the Attorney General  
State of Texas

May 27, 1992

DAN MORALES  
ATTORNEY GENERAL

Mr. Gary F. Chatham  
City Attorney  
City of Plano  
P. O. Box 860358  
Plano, Texas 75086-0358

VIA FACSIMILE  
AND  
U. S. MAIL

OR92-264

Dear Mr. Chatham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15763.

You have received a request for copies of any complaint letters sent to the City of Plano (the "city") concerning a certain hedge in an alley right-of-way. You claim that the requested information relates to anticipated litigation and is therefore excepted from required public disclosure by section 3(a)(3) of the Open Records Act. You also claim that the name of the complainant is protected by the informer's privilege as incorporated into the Open Records Act by section 3(a)(1).

The informer's privilege applies when a person reports violations of the law to officials having a duty to enforce the law. Open Records Decision No. 515 (1988) at 2. The informer's privilege serves to encourage the flow of information to the government by protecting the identity of the informer. *Id.* If the contents of the informer's statement would tend to reveal the identity of the informer, the privilege protects the statement itself to the extent necessary to preserve the informer's anonymity. *Id.* The basis for the informer's privilege is to protect informers from the fear of retaliation and thus encourage them to cooperate with law enforcement efforts. *Id.* The informer's privilege under section 3(a)(1) is applicable not only to law enforcement agencies, but also to "administrative officials having a duty of inspection or of law enforcement within their particular spheres". Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767

(McNaughton rev. ed. 1961) and cases cited therein); *see also* Attorney General Opinion MW-575 (1982) at 2.

You advise us that the requestor does not seek the complainant's identity. We have examined the document submitted to us for review and conclude that release of the remaining information would not tend to reveal the identity of the informer. Accordingly, the remainder of the requested document is not protected by the informer's privilege and may not be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

Section 3(a)(3) excepts

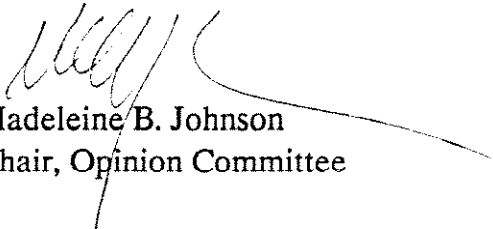
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You advise us that the requestor has "filed a formal claim with the Risk Management Department of the City in the amount of \$16,958.22 for damages as a result of the trimming of the overgrown hedge by City employees." As you have failed to submit to us for review a copy of the claim for damages, we are unable to determine whether litigation may be reasonably anticipated. Accordingly, you may not withhold the requested information under section 3(a)(3) of the Open Records Act. With the exception of the complainant's name, address, and telephone number, the requested information must be released immediately.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-264.

Yours very truly,



Madeleine B. Johnson  
Chair, Opinion Committee

MBJ/lmm

Ref.: ID# 15763

cc: Ms. Nancy B. Monson  
3301 Henri Court  
Plano, Texas 85023